

§ 655.940(f)(2) of this part may not be re-submitted.

(c) *Applicability.* Subparts J and K of this part apply to all employers who seek to employ F-1 students in off-campus work in positions unrelated to their field(s) of study.

(d) *Final date.* ETA will not accept attestations under this program after September 30, 1996.

(e) *Revalidation of employer attestations in effect on November 30, 1995.* Any employer's attestation which was valid on November 30, 1995, is revalidated effective on November 30, 1995, and shall remain valid through September 30, 1996, unless withdrawn or invalidated.

[56 FR 56865, 56876, Nov. 6, 1991, as amended at 59 FR 64776, 64777, Dec. 15, 1994; 60 FR 61210, 61211, Nov. 29, 1995]

§ 655.910 Overview of process.

This section provides a context for the attestation process to facilitate understanding by employers that seek to employ F-1 students in off-campus work.

(a) *Department of Labor's responsibilities.* The Department of Labor (DOL) administers the attestation process. Within DOL, the Employment and Training Administration (ETA) shall have responsibility for accepting and filing employer attestations on behalf of F-1 students; the Employment Standards Administration (ESA) shall be responsible for conducting any investigations concerning such attestations.

(b) *Employer attestation responsibilities.* Prior to hiring any F-1 student(s) for off-campus employment, an employer must submit an attestation on Form ETA-9034, as described in § 655.940 of this part, to the Employment and Training Administration (ETA) of DOL at the address set forth at § 655.930 of this part.

(1) The attesting employer shall file the attestation with the Designated School Official (DSO) of each educational institution from which it seeks to hire F-1 students. If the employer is filing the attestation with the DSO simultaneously to filing it with DOL, or prior to DOL's accepting it, the employer must provide the DSO with a copy of the accepted attestation

within 15 days after receiving the attestation from DOL.

(2)(i) Each attestation shall be valid through September 30, 1996. Throughout the validity period of the attestation, the employer may hire F-1 students as needed, during the 90-day period immediately following each 60-day recruitment period, for the positions specified on Form ETA-9034, at the required wage rate, from any educational institution in the geographic area of intended employment. In order to employ F-1 students in any occupation(s) different from the occupation(s) specified in the attestation, the employer shall file a new attestation with ETA.

(ii) The employer shall have the burden of proving the truthfulness and accuracy of each attestation element in the event that such attestation element is challenged in an investigation.

(iii) Substantiating documentation in support of each attestation element must be maintained by the employer and shall be made available to DOL for inspection and copying upon request. If the employer maintains the specific documentation recommended in appendix A of this subpart, and the documentation is found to be truthful, accurate, and substantiates compliance, it shall meet the burden of proof. If the employer chooses to support its attestation in a manner other than in accordance with appendix A of this subpart, the employer's documentation must be of equal probative value to that shown in appendix A of this subpart in the event of an investigation.

(c) *Designated School Official (DSO) responsibilities.* The Department notes that the basic responsibilities of the DSO are outlined in INS regulations at 8 CFR 214.2(f).

(1) DOL understands INS regulations to mean that the DSO at the educational institution is expected to assure that, prior to authorizing the off-campus employment of any F-1 student(s):

(i) It has received an attestation from the prospective employer;

(ii) The prospective employer has not been disqualified from participation in the F-1 student work authorization program (Employers disqualified from participation in the program are listed

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in the FEDERAL REGISTER. See § 655.950(b) of this part; and

(iii) The F-1 student(s) has completed one year of study and is maintaining good academic standing at the institution.

(2) It is also understood that the DSO will not authorize F-1 student(s) to work in excess of 20 hours per week during the academic term, and that the DSO shall notify ETA when the employer of F-1 student(s) has not provided the educational institution with an accepted copy of the attestation within 90 days of its receipt of the attestation from the employer.

(d) *Complaints.* (1) Complaints alleging that an attestation is materially false or that wages were not paid in accordance with the attestation may be filed by any aggrieved party with the Wage and Hour Division (Administrator), of the Employment Standards Administration, DOL, according to the procedures set forth in subpart K of this part.

(i) Examples of violations that may be alleged in a complaint include:

(A) The employer failed to pay an F-1 student the prevailing wage for the occupation in the area of intended employment;

(B) The employer failed to pay the actual wage for the position(s) at the employer's place of business; or

(C) The employer's recruitment efforts demonstrated that qualified U.S. workers were available for the position(s) filled by F-1 students.

(ii) The Administrator shall review the allegations contained in the complaint to determine if there are reasonable grounds to conduct an investigation. If, after investigation, the Administrator finds a violation, the Administrator shall disqualify the employer (after notice and opportunity for a hearing) from employing F-1 students and shall so notify INS.

(2) Complaints alleging that an F-1 student is not maintaining the required academic standing or is working in excess of the authorized number of hours of employment per week shall be filed with the INS.

(e) *Termination of program.* The pilot F-1 student visa program of section 221 of the Immigration Act of 1990 expires after September 30, 1996, and the De-

partment of Labor will not accept any further employer attestations after that date. 8 U.S.C. 1184 note. However, complaints and appeals arising out of actions occurring prior to September 30, 1996, will continue to be received, investigated, and processed under the standards and procedures of subparts J and K of this part. Therefore, subparts J and K of this part remain in effect through the completion of such enforcement.

[56 FR 56865, 56876, Nov. 6, 1991, as amended at 59 FR 64777, Dec. 15, 1994; 60 FR 61210, 61211, Nov. 29, 1995]

§ 655.920 Definitions.

For the purposes of subparts J and K of this part:

Accepted for filing means that an attestation submitted by the employer or his designated agent or representative has been received and filed by the Employment and Training Administration of the Department of Labor.

Act means the Immigration Act of 1990, as amended.

Actual wage means the wage rate paid by the attesting employer to all similarly situated employees in the occupation at the worksite at the time of employment.

Administrative Law Judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, or such authorized representatives as may be designated to perform any of the functions of the Administrator under subparts J and K of this part.

Area of intended employment means the geographic area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Metropolitan Statistical Area (MSA), any place within the MSA is deemed to be within normal commuting distance of the place of intended employment.

Attestation means a properly completed Form ETA-9034.

Attesting employer means any employer who has filed an attestation required by section 221 of the Act.